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School Food Authorities for the purposes of the related program during the fiscal year for which the funds were initially available, and second to repay any State funds expended in the reimbursement of claims under the program and not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this part.

(g) With respect to School Food Authorities of schools in which the program is administered by FNSRO, when FNSRO disallows a claim or a portion of a claim, or makes a demand for refund of an alleged overpayment, it shall notify the School Food Authority of the reasons for such disallowance or demand and the School Food Authority shall have full opportunity to submit evidence or to file reclaims for any amounts disallowed or demanded in the same manner as that afforded in this section to School Food Authorities of schools in which the program is administered by State agencies.

(h) In the event that the State agency or FNSRO, where applicable, finds that a school is failing to meet the requirements of § 220.8(g), § 220.8(i)(2) and (i)(3), whichever is applicable, the State agency or FNSRO need not disallow payment or collect an overpayment arising out of such failure, if the State agency or FNSRO takes such other action as, in its opinion, will have a corrective effect.

(i) The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of

Title 28, U.S. Code, to conduct litigation on behalf of the United States.

(44 U.S.C. 3506; secs. 804, 816 and 817, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785))

[32 FR 37, Jan. 5, 1967. Redesignated by Amdt. 2, 33 FR 14513, Sept. 27, 1968, and amended by Amdt. 9, 37 FR 9614, May 13, 1972; 40 FR 30925, July 24, 1975. Redesignated and amended by Amdt. 25, 41 FR 34757, 34760, Aug. 17, 1976; 47 FR 746, Jan. 7, 1982; Amdt. 42, 47 FR 14134, Apr. 2, 1982; 60 FR 31222, June 13, 1995; 65 FR 26931, May 9, 2000]

§ 220.15 Management evaluations and audits.

(a) Unless otherwise exempt, audits at the State and institution levels shall be conducted in accordance with Office of Management and Budget Circular A–133 and the Department's implementing regulations at 7 CFR part 3052. For availability of the OMB Circular mentioned in this paragraph, please refer to 5 CFR 1310.3.

(b) Each State agency shall provide FNS with full opportunity to conduct management evaluations (including visits to schools) of all operations of the State agency under the programs covered by this part and shall provide OIG with full opportunity to conduct audits (including visits to schools) of all operations of the State agency under such programs. Each State agency shall make available its records, including records of the receipt and expenditure of funds under such programs, upon a reasonable request by FNS or OIG. OIG shall also have the right to make audits of the records and operations of any school.

(c) In conducting management evaluations, reviews, or audits in a fiscal year, the State agency, FNS, or OIG may disregard an overpayment if the overpayment does not exceed \$600. A State agency may establish, through State law, regulation or procedure, an alternate disregard threshold that does not exceed \$600. This disregard may be made once per each management evaluation, review, or audit per Program within a fiscal year. However, no overpayment is to be disregarded where

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there is substantial evidence of violations of criminal law or civil fraud statutes.

(Secs. 805 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773); sec. 812, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1759a))

[40 FR 30925, July 24, 1975. Redesignated and amended by Amdt. 25, 41 FR 34757, 34760, Aug. 17, 1976; 43 FR 59825, Dec. 22, 1978; Amdt. 41, 47 FR 14135, Apr. 2, 1982; Amdt. 43, 47 FR 18564, Apr. 30, 1982; Amdt. 56, 54 FR 2990, Jan. 23, 1989; 57 FR 38587, Aug. 26, 1992; 59 FR 1894, Jan. 13, 1994; 64 FR 50742, Sept. 20, 1999; 71 FR 30563, May 30, 2006; 71 FR 39517, July 13, 2006]

§ 220.16 Procurement standards.

(a) *Requirements.* State agencies and School Food Authorities shall comply with the requirements of 7 CFR part 3016 or 7 CFR part 3019, as applicable, concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in 7 CFR part 3016 or 7 CFR part 3019, as applicable, do not relieve the State agency or School Food Authority of any contractual responsibilities under its contract. The State agency or School Food Authority is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes but is not limited to: source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State or Federal authority that has proper jurisdiction.

(c) *Procurement procedure.* State agencies or school food authorities may use their own procedures for procurement with program funds to the extent that:

(1) Procurements by public school food authorities comply with applicable State or local laws and standards set forth in 7 CFR part 3016; and

(2) Procurements by nonprofit private school food authorities comply

with standards set forth in 7 CFR part 3019.

(d) *Buy American.*—(1) *Definition of domestic commodity or product.* In this paragraph (d), the term “domestic commodity or product” means—

(i) An agricultural commodity that is produced in the United States; and

(ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(2) *Requirement.*—(i) *In general.* Subject to paragraph (d)(2)(ii) of this section, the Department shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.

(ii) *Limitations.* Paragraph (d)(2)(i) of this section shall apply only to—

(A) A school food authority located in the contiguous United States; and

(B) A purchase of domestic commodity or product for the school breakfast program under this part.

(3) *Applicability to Hawaii.* Paragraph (d)(2)(i) of this section shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school breakfast program under this part.

(Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 45, 48 FR 19355, Apr. 29, 1983, as amended at 64 FR 50743, Sept. 20, 1999; 71 FR 39517, July 13, 2006]

§ 220.17 Prohibitions.

(a) In carrying out the provisions of this part, the Department shall not impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, and materials of instruction in any school as a condition for participation in the Program.

(b) The value of assistance to children under the Act shall not be considered to be income or resources for any purposes under any Federal or State laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs. Expenditure of funds from State and local